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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,985	04/30/2001	Benjamin Chaloner-Gill	N19.12-0047	2942
24113	7590	12/12/2003	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100				RUTHKOSKY, MARK
ART UNIT		PAPER NUMBER		
		1745		
DATE MAILED: 12/12/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/845,985	CHALONER-GILL ET AL.
	Examiner	Art Unit
	Mark Ruthkosky	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6-21 and 48-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-21 and 48-54 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 September 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10. 6) Other: _____

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement 5/15/2003 has been placed in the application file, and the information referred to therein has been considered as to the merits.

Drawings

The corrected drawings, files 10/9/2003, are acceptable and overcome the objection to as noted on the PTO-948, Notice of Draftsperson's Patent Drawing Review.

Specification

The amendment filed 10/9/2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: with regard to claim 13, the specification does not teach an active material of a phosphate anion and a lithium cation, comprising a compound with the formula $\text{Fe}_3(\text{PO}_4)_2$. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-21 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the claims, the phrase, "less than about" is indefinite as the limitation, "less than" described a definite maximum value, while the word "about" contradicts that value. In the claims, the phrase, "greater than about" is indefinite as the limitation, "greater than" described a definite minimum value while the word "about" contradicts that value.

The same reasoning presently rejects claims 48-52.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of claims 1-4, 6 and 13-15 under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 5,102,836) has been overcome by the applicant's amendment.

The rejection of claims 1-4 and 10-14 under 35 U.S.C. 102(b) as being anticipated by Matson et al. (US 5,652,192) has been overcome by the applicant's amendment.

Claims 1-4, 6, 10, 16 and 19-21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kamauchi et al. (US 5,538,814.)

The instant claims are to a collection of particles comprising a crystalline composition with a phosphate anion and a lithium cation; the collection of particles has an average particles size of less than about 1000 nm. Kamauchi et al. (US 5,538,814) teaches a lithium secondary

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battery with a lithium cobalt phosphate active material with an average particle size of 10 nm to 20 μm (see claims 1-14.) Other metals may be added to the active material (col. 4, lines 10-65.) The material may be crystalline or amorphous (see col. 6, lines 1-20.) Thus, the claims are anticipated.

New Rejections

Claims 7, 12, 17, 21, and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamauchi et al. (US 5,538,814.)

The instant claims are to a collection of particles comprising a crystalline composition with a phosphate anion and a lithium cation; the collection of particles has an average particles size of less than about 1000 nm. Kamauchi et al. (US 5,538,814) teaches a lithium secondary battery with a lithium cobalt phosphate active material with an average particle size of 10 nm to 20 μm (see claims 1-14.) Other metals may be added to the active material (col. 4, lines 10-65.) The material may be crystalline or amorphous (see col. 6, lines 1-20.) The material may be of the formula LiCoPO₄ with Fe substituted for the Co (see column 4, lines 15-55.) With regard to claim 21 “at least about” is considered to include points the range of 10 nm to 20 μm . Thus, the claims are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 and 17-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Goodenough et al. (US 5,910,382), and further in view of Kamauchi et al. (US 5,538,814.)

Goodenough et al. (US 5,910,382) teaches cathode materials for a lithium secondary battery including LiFePO_4 and $\text{LiFe}_{1-x}\text{Mn}_x\text{PO}_4$, where x is between 0 and 1. The anode is lithium metal or a lithium intercalation material (see col. 1.) The reference is silent to the size of the active material particles. Kamauchi et al. (US 5,538,814) teaches a lithium secondary battery with a lithium cobalt phosphate cathode active material with an average particle size of 10 nm to 20 μm (see col. 5, line 25 to col. 6, line 20 and claims 1-14.) Other metals may be added to the active material including iron and manganese (col. 4, lines 10-65.) The electrode material is pulverized into particles having an average size of 10 nm to 20 μm . It would be obvious to one of ordinary skill in the art at the time the invention was made to prepare the cathode materials of Goodenough et al. (US 5,910,382) to a size of less than 1000 nm as the small size provides and increased surface area and dispersion through the electrode which increases the capacity of the positive electrode as shown by Kamauchi et al. (US 5,538,814.)

Claims 13-15 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamauchi et al. (US 5,538,814.)

Kamauchi et al. (US 5,538,814) teaches a lithium secondary battery with a lithium cobalt phosphate active material with an average particle size of 10 nm to 20 μm (see claims 1-14.) Other metals may be added to the active material (col. 4, lines 10-65.) The material may be crystalline or amorphous (see col. 6, lines 1-20.) The reference does not teach that the collection

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of particles has essentially no particle with a diameter greater than about 3 times or 5 times the average particle size; or that at least 95 percent of the particles have a diameter greater than about 40 percent and less than about 160 percent of the average diameter. It would be obvious to one of ordinary skill in the art at the time the invention was made to prepare a collection of particles for an electrode material of Kamauchi having a greater number of particles as close in size to the desired average diameter as possible, as the average diameter has been shown to be critical to the invention. One of ordinary skill in the art has the knowledge, based on Kamauchi, to prepare particles of selected sizes by pulverizing and separating the materials. Further, one of ordinary skill in the art would be motivated to choose specific particles of the average diameter for the electrode, as particles of this diameter are taught to increase the capacity of the electrode (col. 5, lines 30-35.)

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodiger et al. (US 5,849,827.)

Bodiger et al. (US 5,849,827) teaches a collection of particles of inorganic powders such as aluminum phosphate. The particles have a mean particle diameter of 1-50 nm (see claims 1-9.) The reference is silent to the crystallinity of the material and does not suggest that the material is either crystalline or amorphous. It would be obvious to one of ordinary skill in the art at the time the invention was made to prepare the powder either as a crystalline material or as an amorphous material as the material will provide a significant reduction in burning times in a molding composition regardless of the state of crystallinity. One of ordinary skill in the art would recognize that the crystallinity of the material will not affect the properties of the

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composition. The artesian would have found the claimed invention to be obvious in light of the teachings of the references.

Response to Arguments

Applicant's arguments filed 10/9/2003 have been fully considered but they are not persuasive. The rejection of claims 1-4, 6 and 13-15 under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 5,102,836) has been overcome by the applicant's amendment and the rejection of claims 1-4 and 10-14 under 35 U.S.C. 102(b) as being anticipated by Matson et al. (US 5,652,192) has been overcome by the applicant's amendment.

With regard to the rejection under 35 U.S.C. 112 2nd paragraph, the claims incorporate the phrases, "less than about" and "greater than about." The phrases are indefinite as the limitations, "less than and greater than" describe a definite minimum and maximum value, while the word "about" contradicts that value. The applicant argues that the claims are clear to one of ordinary skill in the art. The applicants cites that the precision of a number is not limited by the phrases, "less than", "greater than" or "at least" with regard to support in a disclosure. While this may or may not be true, 35 U.S.C. 112 2nd paragraph requires a claim to distinctly claim the subject matter which the applicant regards as his invention. As shown in the MPEP, section 2173.05(b), the phrase "at least about" is held as indefinite where there is close prior art and nothing in the specification, prosecution history or prior art to provide an indication of what range of specific activity is covered by the term "about," with the MPEP citing Amgen Inc. vs. Chugi Pharmaceutical Co. Ltd. As the average particle sizes in the claims are anticipated by the prior art, the prior art is considered close prior art and the rejection is deemed proper.

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With regard to the arguments to the rejections under 35 U.S.C. 102(b) as being anticipated by Kamauchi et al. (US 5,538,814), the applicant states that the reference does not teach an active material of lithium crystalline materials and that the submicron particles of the lithium active material are to oxides and not to phosphates.

The applicant's argues that the reference does not teach crystalline materials, however, the reference states that the positive electrode *may* include an amorphous, or non-crystalline oxide. The reference clearly teaches that when a crystalline active material of the invention is used as the positive electrode active material, lithium ions are intercalated at regular intervals in the crystalline structure (column 6, lines 1-20.) When an amorphous structure is used, a greater amount of lithium ions are intercalated at irregular intervals, and that the greater number of sites in the disordered structure produces a higher electrode capacity and, therefore, a battery with a higher energy density. The reference further describes methods to make the material amorphous, such as using an abrupt cooling method, as compared to methods of making a crystalline material. From this, it is clear that the reference teaches embodiments of an active material with a crystalline structure and an amorphous structure, even though it is noted that the amorphous structure is preferred for a lithium active material.

With regard to the applicant's arguments that the reference does not teach submicron particles of lithium active material that are phosphates, the reference teaches a positive active material including a compound containing phosphorous with a small ionic radius and a smaller formula amount than that of transition metal (col. 13, lines 10-15.) The reference states that the active material may be one of lithium phosphate, lithium cobalt phosphate, cobalt oxide and lithium cobalt oxide and mixtures thereof (column 2, lines 50-65, column 4, lines 1-52, claims 1-

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3.) The product is pulverized into an active material having small particle sizes. Claims 1-3 do not state that only oxides have an average particle size of 10 nm -20 μm . The reference clearly states that the *active material* has an average particle size of 10 nm -20 μm (claims 1-3.)

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Examiner Correspondence

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Ruthkosky whose telephone number is 703-305-0587. The examiner can normally be

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reached on FLEX schedule (generally, Monday-Thursday from 9:00-6:00.) If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at 703-308-2383. The fax phone number is 703-872-9396.

Mark Ruthkosky

Primary Patent Examiner

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*Mark Ruthkosky
12/4/03*